

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000166-001 DT

03/31/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

DIANA C HINZ

v.

ROGER STEVEN UKENESKEY (001)

SIMONE A ATKINSON

PHX CITY MUNICIPAL COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULE / REMAND

PHOENIX CITY COURT

Cit. No. #6095330

Charge: 1) DUI-LIQUOR/DRUGS/VAPORS/COMBO
2) EXTREME DUI-BAC .15 OR MORE

DOB: 06/20/46

DOC: 06/29/02

This Court has jurisdiction of this criminal appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since the time of oral argument on February 2, 2004. This decision is made within 60 days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Phoenix City Court, and the memoranda and oral arguments submitted by counsel.

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The only issue raised by the Appellant in this appeal from a submission to the court in a DUI and Extreme DUI case is whether the trial court erred in denying Appellant's pretrial Motion to Suppress the results of a blood draw. Appellant contends (as he did before the trial court) that the results of the blood draw should be suppressed for the reason that the police officer-phlebotomist who drew his blood was not qualified. Arizona law is clear that any person whom the State demonstrates is qualified to perform a blood draw by reason of training or experience in that procedure will satisfy the requirements of A.R.S. Section 28-1388(A).¹

The record in this case indicates that Appellant's blood was drawn by Phoenix Police Officer, Lisa Gillian. Gillian completed a training program at Phoenix College in phlebotomy. She was certified by the Law Enforcement Phlebotomy Program and was required to complete 100 successful blood draws as part of her qualifications. She had conducted at least ten (10) blood draws prior to the blood draw from Appellant. Gillian was a surgical assistant prior to becoming a police officer; however, she had no experience as a phlebotomist prior to taking the Phoenix College program. Gillian was unsuccessful in her first two attempts to draw blood from Appellant after his arrest on June 29, 2002. Gillian was successful on her third attempt and obtained two vials of Appellant's blood from his left arm at 11:32 p.m. Gillian explained that because Appellant was 50-70 pounds overweight, his weight made it more difficult to draw blood. Subsequent training completed by Gillian after the blood draw she performed on the Appellant instructed her that if blood could not be obtained after two attempts, another phlebotomist should be called for the blood draw.

This Court finds no abuse of discretion or error of law in the conclusion of the trial judge that Phoenix Police Officer Lisa Gillian was a qualified person under A.R.S. Section 28-1388(A) to draw blood from the Appellant. The record supports the trial judge's conclusions that Gillian was qualified as she was successful in drawing blood from the Appellant. Furthermore, though it took Gillian three attempts to complete a blood draw, the difficulty of the blood draw may be easily explained by the fact that Appellant was overweight. This Court finds no error.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the trial court in this case.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.

/s/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

¹ State v. Carrasco, 203 Ariz. ___, 49 P.3d 1140, 378 Ariz.Adv.Rep. 88 (App. 2002); State v. Olcavage, 200 Ariz. 582, 30 P.3d 649 (App. 2001).